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No. 92-284

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

FRANK W. and LORNA D. STAMOS,

Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF

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25 pp

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SUPPLEMENTAL BRIEF

The petitioners, Frank W. Stamos and Lorna D. Stamos, respectfully submit this Supplemental Brief under Rule No. 15.7 of the Rules of the Supreme Court of the United States.

The petitioners invite the attention of the Court to new evidence, not yet available at the serving of the Petition for Writ of Certiorari on August 12, 1992.

THE DECREE OF THE CIRCUIT COURT BELOW THAT TAX DEFICIENCIES WERE COMPUTED UNDER THE STATUTORY AUTHORITY OF SECTION 6020(b) OF THE CODE IS ERROR IN FACT

The Circuit Court below erred in basing the validity of the tax deficiencies in question upon the erroneous conclusion that, "...the CIR computed the Stamoses tax deficiencies using substitute returns pursuant to the statutory authority granted in section 6020(b) of the Code." (See pages A-4 and A-5 of Petition for Writ of Certiorari, docketed August 12, 1992, 92-284).

The United States Tax Court erred, as well, in basing the validity of said tax deficiencies upon the erroneous conclusion that, "Pursuant to section 6020(b) respondent prepared separate substitute returns for petitioners." And, as a result of the alleged execution of said returns,

"...respondent sent petitioners the notices of deficiency here in issue. All notices were signed on behalf of respondent by the District Director, Sacramento, California, Office of the Internal Revenue Service (IRS)." (See Appendix B of Petition for Writ of Certiorari, docketed August 12, 1992, 92-284).

The new evidence contained herein shows conclusively that respondent never executed, filed or served returns under the statutory authority of 26 U.S.C. § 6020(b), for petitioners in the instant case. There is thus an absence of procedural correctness administratively that precludes respondent, or his delegate, from making a valid tax determination. Absent statute authority the deficiencies cannot stand as their premise is based only upon an arbitrary and capricious agency act, this Court should and

will reverse the Circuit Court below.

According to respondents delegate in an August 20, 1992, Freedom of Information Act Request, the Secretary never prepared returns for the petitioners under the authority of § 6020(b), respondent now makes the claim that Code Sections 6211, 6212, and 6213 are the authorities applied to initiate the tax deficiencies at issue. (See Appendix A herein).

In a previous communication, the same delegate wrote in a manner which revealed the existence of ambiguity in the record as to exactly what statutory authority was applied to execute the alleged return. On August 15, 1989, Disclosure Officer Duane Jones wrote that the statutory provisions for determining the tax deficiencies in issue was Internal Revenue Code Section 7602. He then expressly apologized for his

previously claiming incorrectly that sections 6211 and 6212 were used to determine the deficiencies, (See Appendix B herein). Subsequently, in his most recent communication of August 20, 1992, he reverts back to the sections he apologized for previously citing.

It is axiomatic that correct records remain constant and unchanged, the uncertain way in which Duane Jones responded with advice to the petitioners request for documents indicates a strong probability of agency wrong doing. Petitioners only requested access to documents and did not solicit advice.

Officers of a federal agency should know the correct statutory authority of the General and Permanent Laws of the United States, of which they purport to administer. While 26 U.S.C. § 6211 et seq, authorizes

the Secretary to make adjustments to existing returns and § 7602 authorizes the Secretary to summons books and records, neither authorizes the Secretary to initially execute tax returns.

While Disclosure Officer, Duane Jones, waffled to and fro with uncertainty as he voluntarily addressed the statute authority applied by his colleagues in determining the alleged tax deficiencies at issue, he expressed with certainty that returns were never filed, for petitioners, by the Secretary, pursuant to the statutory authority of 26 U.S.C. § 6020.

Also, on August 20, 1992, a letter from the United States Tax Court, a result of petitioners request for "certified copies of all returns submitted by respondent as evidence, pursuant to 6020(b) as prepared for petitioners, as decided in the opinion

of Judge Carolyn Miller Parr, 95 T.C. 44, filed on December 12, 1990," revealed that executed (6020(b)) returns are not part of the official record in these cases, (See Appendix C herein).

The above evidence explains the failure of the Circuit Court below to disclose, to petitioners, the documents in the record showing that returns were executed pursuant to § 6020(b) of the Internal Revenue Code as decided in the courts decree, (See Appendix C of Petition for Writ of Certiorari docketed August 12, 1992, No. 92-284).

COURTS BELOW FAILED TO SCRUTINIZE RESPONDENTS LACK OF STATUTE AUTHORITY EVEN AFTER CHALLENGE BY PETITIONERS

After being served the Memorandum of March 4, 1992, by the Circuit Court below (See Appendix A of Petition for Writ of Certiorari docketed August 12, 1992, 92-284), the petitioners filed a Petition

for Rehearing. In that brief, petitioners notified the Court that § 6020(b) returns were not relevant to this case as they do not exist in the record. On May 14, 1992, the Circuit Court responded with an Order, "The appellant's petition for rehearing and request for publication under Circuit Rule 36-4 is DENIED, (See Appendix C of Petition for Writ of Certiorari docketed August 12, 1992, 92-284). There was no explanation, no logic or reason, no due process, no justice....just "D E N I E D", as if to say, "if we, Canby, Norris, and Leavy, say the CIR computed tax deficiencies against you pursuant to the statutory authority granted in section 6020(b), it is so, regardless of what the record shows.

As for the United States Tax Court: On November 13, 1989, petitioners respectfully made an informal discovery request regarding

the very code section at issue here.

Question 3 of the request addressed the subject of IRC § 6020(b) and how it applies to petitioners[1].

This line of discovery, if compelled by the Tax Court would have resolved the issue and avoided further litigation; based upon the erroneous position that the Secretary executed returns pursuant to the authority of 26 U.S.C. § 6020(b), respondent filed tax liens citing a 1040 Tax. In the situation

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[1] 3. Internal Revenue Code section 6020(b): This discovery relates to the authority and proper subject application of this section. Internal Revenue Manual 5200 lays down the limited scope of 26 U.S.C. 6020(b) assessment procedures which apply only to employment, excise and partnership tax returns. The Delegation of Authority Orders #12 and #17 signed by the District Director (attachments 5 and 6) confirm the findings in sections 5291 of the Internal Revenue Manual. The District Director shows two additional forms, 4638 and 2290.

(a) Do the respondents records indicate that the petitioner, in the instant case, is a proper subject of §6020(b) authority?

where a tax return is filed by the Secretary pursuant to the statutory authority of § 6020(b), a 1040 form cannot correctly be used. The statute and the form are quite simply irrelevant to one another.

On January 3, 1990, petitioners sent a

If the answer is yes, please advise the petitioner of the activity that he is allegedly involved in which makes him a legitimate subject of the section by sending copies of the documents which support your contention.

(b) Do the respondents contend that the District Director has delegated the authority to his subordinates to file a #1040 tax return for the petitioner under the authority of §6020(b)?

If the answer is yes, please send a copy of the form, #416 Delegation of Authority Order, showing §6020(b) and form #1040 signed by the District Director.

(c) Do the respondents consider it to be correct and acceptable procedure for revenue officer Dennis Brown, or other officers, to function outside of the scope of their delegation of authority as it relates to the statute?

If the answer is yes, please send copies of the documents that you rely upon.

follow-up to the request advising respondents that if they do not respond to the request, petitioners would file a motion with the U.S. Tax Court compelling response. Petitioner Frank W. Stamos was ridiculed by I.R.S. District Counsel, Bridgette M. Gibson for bringing the questions. Petitioner, Frank W. Stamos, was attempting to narrow the issues for trial, but without success.

On January 16, 1990, petitioners filed a motion in the U.S. Tax Court to compel response. On January 31, 1990, the court stamped the motion "Denied" with no comment, the Tax Court was obviously not interested in scrutinizing the validity of respondents arbitrary and capricious acts. The Tax Court subsequently applied the statute as the premise by which they ruled for respondent against petitioners, to be sure a biased and prejudiced decision.

IN REVIEWING THE LAW AND EVIDENCE OF THIS CASE, THE SOLICITOR GENERAL MUST KNOW HE HAS NO STANDING TO FILE AN OPPOSITION OF SUBSTANCE

On August 20, 1992, the Office of the Solicitor General, as a result of being served copies of the Petition for Writ of Certiorari in this action, served notice to this Court: "The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court."

The above response is not surprising as the issue must be a serious embarrassment to Kenneth W. Starr, The Solicitor General. Such a false claim that statute authority was properly applied,when it was not, vitiates the entire action on the part of the Government. It is understandable indeed that the Solicitor General is reluctant to maintain the action any further than it has

already gone. The evidence is overwhelming that the government successfully employed fraud to gain advantage over petitioners.

CONCLUSION

Within the litigation below, one thing is sure: Based upon the premise that legal documents under a specific federal statute authority has been accepted to have been duly executed by the United States Tax Court and the United States Court of Appeals for the Ninth Circuit and used as evidence to decide in favor of respondent and against the petitioners.

The prevailing legal documents however are not found in the system of records within the offices of respondent, were not served upon the petitioners and were never made a part of the official record in the Courts below. One could reasonably and correctly presume and assume that said legal

documents are non-existent. One could also reasonably and correctly presume and assume that any act performed by any person with direct reliance upon said non-existent legal document, is arbitrary with no legal effect within our system of justice here in these United States of America.

One could also reasonably and correctly presume and assume that if one purports a non-existent legal document to be a valid instrument and the Court relies upon said testimony as legitimate and prevailing evidence, that a fraud has been successfully worked against the victim and the Court.

Within the litigation in the Court below, respondent somehow successfully masqueraded thin air as representing a binding legal document. The Courts below accepted the trickery and deception as fact and literally awarded respondent 10 times

the monetary worth of petitioners.

MOTION

The petitioners, in plain American language and spirit of what America is, moves this Court to grant the Writ of Certiorari, docket no. 92-284, then reverse the decision of the Circuit Court below based upon respondents unconscionable fraud upon the petitioners and the Court. And to render the tax deficiencies at issue void as a matter of law.

The petitioners respectfully submit this Supplemental Brief along with 40 copies to this Honorable Supreme Court of the United States on this 17th day of September, 1992, the 205th anniversary, to the day, of the adoption of our Constitution of the United States by the delegates of the Constitutional Convention in 1787. God Bless American!

Date: SEP. 17 1992

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